

**EXHIBIT A**

FILED

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CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

GLT  
MLGx

11 ICN Pharmaceuticals, Inc.,

Case No.: SACV 01-892

12 Plaintiff,

COMPLAINT FOR PATENT  
INFRINGEMENT AND INTERFERENCE  
WITH PROSPECTIVE ADVANTAGE

13 vs.

JURY DEMANDED

14 Geneva Pharmaceuticals, Inc.,

15 Defendant  
1617 PARTIES

18 1. Plaintiff, ICN PHARMACEUTICALS, INC. ("ICN"), is a  
19 corporation organized under the laws of the State of Delaware  
20 and having a mailing address at 3300 Hyland Avenue, Costa Mesa,  
21 California 92626.

22 2. Defendant, GENEVA PHARMACEUTICALS, INC. ("GENEVA"), is,  
23 upon information and belief, a corporation organized under the  
24  
25

1 laws of Colorado and having a mailing address at 2555 W. Midway  
2 Blvd., Broomfield, Colorado 80020.

3 3. Defendant, GENEVA, is, upon information and belief, a  
4 wholly-owned subsidiary of Novartis Corporation, a foreign  
5 corporation organized under the laws of the State of Delaware  
6 and having a mailing address at 59 Route 10, East Hanover, New  
7 Jersey, 07936.

8 4. Novartis Corporation is, upon information and belief,  
9 doing business in California as Novartis Pharmaceuticals  
10 Corporation.

11 5. Defendant, GENEVA, is, upon information and belief,  
12 doing business and distributing goods nationwide, including  
13 California, as GENEVA PHARMACEUTICALS, INC.

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15 JURISDICTION AND VENUE

16 6. This Court has jurisdiction pursuant to 28 U.S.C.  
17 §§ 1331, 1338, and 1367, and 35 U.S.C. §§ 101 et seq., and  
18 because the action set forth herein arises under the Act of  
19 Congress relating to patents.

20 7. GENEVA is subject to personal jurisdiction in this  
21 District because it regularly solicits business in this  
22 District by making and shipping pharmaceutical products into  
23 this District, it regularly distributes pharmaceutical products  
24 in this District, it offers to sell, is selling, or is causing  
25

1 others to use pharmaceutical products in this District, or  
2 derives substantial revenue from sales and distribution of  
3 pharmaceutical products in this District, or otherwise has  
4 engaged in a persistent course of conduct in this District.  
5 Defendant GENEVA derives substantial revenue from interstate or  
6 international commerce, including substantial revenue from  
7 goods used or consumed or services rendered in the State of  
8 California and this Judicial District. Defendant GENEVA has  
9 committed, and unless enjoined will continue to commit,  
10 tortious acts outside of the State of California that GENEVA  
11 expects or should reasonably expect to have consequences in the  
12 State of California.

13 8. Venue is proper in this Judicial District pursuant to 28  
14 U.S.C. §§ 1391(c) and 1400(b).  
15

16 CLAIM ONE: PATENT INFRINGEMENT

17 9. ICN Pharmaceuticals, Inc., is the lawful owner by  
18 assignment of all right, title and interest in and to the  
19 following United States patents, including all right to sue and  
20 to recover for past infringement thereof:

21 A) United States Patent No. 5,767,097 ("097"), duly and  
22 legally issued on June 16, 1996, entitled "SPECIFIC MODULATION  
23 OF TH1/TH2 CYTOKINE EXPRESSION BY RIBAVIRIN IN ACTIVATED T-  
24 LYMPHOCYTES";  
25

1 B) United States Patent No. 6,063,772 ("772"), duly and  
2 legally issued on May 16, 2000, entitled "SPECIFIC MODULATION  
3 OF TH1/TH2 CYTOKINE EXPRESSION BY RIBAVIRIN IN ACTIVATED T-  
4 LYMPHOCYTES"; and

5 C) United States Patent No. 6,150,337 ("337"), duly and  
6 legally issued on Nov. 21, 2000, entitled "SPECIFIC MODULATION  
7 OF TH1/TH2 CYTOKINE EXPRESSION BY RIBAVIRIN IN ACTIVATED T-  
8 LYMPHOCYTES".

9 10. A true and correct copy of each of the Patents  
10 mentioned above are annexed hereto as Exhibits A, B and C and  
11 are herein collectively referred to as "INTELLECTUAL PROPERTY".

12 11. The 5,767,097, 6,063,772, and 6,150,337 patents are  
13 directed generally to novel uses of Ribavirin.

14 12. Plaintiff, ICN, markets and sells ribavirin in the  
15 United States in cooperation with its licensee, Schering Plough  
16 Corporation.

17 13. Upon information and belief, GENEVA through its  
18 subsidiary or related entity, Geneva Pharmaceuticals Technology  
19 Corporation, submitted to the Food and Drug Administration  
20 ("FDA") an Abbreviated New Drug Application ("ANDA"), No. 76-  
21 192, under §505(j) of the Federal Food, Drug and Cosmetic Act  
22 (21 U.S.C. §355(j)) to obtain approval to engage in the  
23 commercial manufacture, use or sale of ribavirin 200 mg.  
24 capsules, a generic version of plaintiffs' ribavirin, before  
25

1 the expiration date(s) of the INTELLECTUAL PROPERTY.

2 14. Upon information and belief, and subject to Rule  
3 11(b)(3), Fed. R. Civ. P., GENEVA's submission of ANDA No. 76-  
4 192 was an act of infringement of the INTELLECTUAL PROPERTY  
5 under the United States Patent Law, 35 U.S.C. §271(e)(2)(A).

6 15. GENEVA sent a "PATENT CERTIFICATION NOTICE" [No. 76-  
7 192] ("NOTICE") to Plaintiff. GENEVA's Notice is dated August  
8 10, 2001. Plaintiff received GENEVA's Notice on or about  
9 August 16, 2001. A true and correct copy of the letter prepared  
10 by GENEVA and received by Plaintiff is attached hereto and  
11 labeled as Exhibit D.

12 16. Upon information and belief, GENEVA has actual  
13 knowledge of the existence of Patents 5,767,097, 6,063,772, and  
14 6,150,337, by virtue of prior information available in the  
15 industry at large, by virtue of Patents 5,767,097, 6,063,772  
16 having been listed on the FDA Orange Book for Rebetrone<sup>™</sup>  
17 Combination, and by virtue of the Notice sent to ICN mentioning  
18 Patents 5,767,097 and 6,063,772 from GENEVA received on August  
19 16, 2001.

20 17. GENEVA's acts of infringement, including inducing  
21 infringement, set forth with respect to GENEVA's ribavirin 200  
22 mg. Capsules, will cause Plaintiffs irreparable harm for which  
23 they have no adequate remedy at law, including irreparable harm  
24 within the State of California and this Judicial District, and  
25

1 will continue unless preliminarily and permanently enjoined by  
2 this Court.

3 18. Upon information and belief, GENEVA's acts of  
4 infringement have been committed willfully and with full and  
5 actual knowledge of ICN's patent rights and have resulted in,  
6 and are currently resulting in, substantial unjust profits and  
7 unjust enrichment on the part of GENEVA, in an as yet  
8 unascertained amount.

9  
10 CLAIM TWO: INTERFERENCE WITH PROSPECTIVE ADVANTAGE

11 19. ICN re-alleges paragraphs 1-19 inclusive.

12 20. Upon information and belief, GENEVA's acts of patent  
13 infringement upon FDA approval of GENEVA's ANDA and GENEVA's  
14 preparation for commercial development of the subject matter,  
15 claims or invention in the INTELLECTUAL PROPERTY have been and  
16 continue to be improperly interfering with ICN's prospective  
17 advantage to contract.

18 21. GENEVA's acts of patent infringement, including  
19 inducing infringement, have resulted in, and are currently  
20 resulting in, substantial loss of prospective business revenue  
21 and good will in an amount as yet undetermined.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against GENEVA as follows:

A) For a preliminary and permanent injunction, pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Rule 65, Fed. R. Civ. P., enjoining GENEVA and its subsidiaries, parent company, affiliate companies, officers, directors, agents, servants, employees and all persons acting for, with, by, through or under them, or any individual in active concert or in participation with them, and other related business entities, their successors and assigns, from any commercial manufacture, use, offer to sell or sale within the United States, or importation into the United States, of any drug product or precursor that infringes the INTELLECTUAL PROPERTY.

B) Requiring GENEVA to prepare and deliver up to the Court a complete list of persons and entities for whom GENEVA has made, used, sold, or offered to sell products which infringe Patents 5,767,097, 6,063,772, or 6,150,337, and to serve a copy of such list to ICN's attorneys.

C) Requiring GENEVA to deliver to the Court any and all documents reflecting or relating to the manufacture, use, sale, or offer for sale of any product which infringes Patents 5,767,097, 6,063,772, or 6,150,337.

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1 D) Requiring GENEVA to deliver up to the Court its  
2 inventory of all product which infringes Patents 5,767,097,  
3 6,063,772. or 6,150,337.

4 E) Requiring GENEVA within 30 days after entry of judgment,  
5 to file with the Court and serve upon ICN's attorneys, a  
6 written report, under oath, setting forth in detail the manner  
7 in which GENEVA has complied with paragraphs A through D above.

8 F) Ordering GENEVA to account for and pay over to ICN  
9 accumulated damages, including profits lost by ICN, sustained  
10 by reason of GENEVA's unlawful acts of patent infringement  
11 herein alleged, and increasing the amount of recovery from  
12 GENEVA as provided by law.

13 G) Finding GENEVA's infringement of ICN's willful and  
14 awarding increased damages, together with interest and costs,  
15 under 35 U.S.C. § 284.

16 H) Finding the present case exceptional and awarding  
17 attorneys' fees to ICN under 35 U.S.C. §§ 271(e)(4) and 285.

18 I) Ordering the FDA to not approve GENEVA's ANDA No. 76-  
19 192.

20 ///

1 J) Providing ICN such other and further relief as the Court  
2 may deem appropriate.

3 Respectfully submitted,

4 FISH & ASSOCIATES, LLP

5  
6 Dated: September 21, 2001

By: 

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JURY DEMAND

PLAINTIFF hereby demands trial by jury on all issues  
trialable to a jury.

Dated: September 21, 2001

By: 

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